

EXHIBIT I

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ELASTICSEARCH, INC., a Delaware
corporation, ELASTICSEARCH B.V., a Dutch
corporation,

Plaintiffs,

v.

FLORAGUNN GmbH, a German corporation,

Defendant.

Case No. 4:19-cv-05553-YGR

**DEFENDANT FLORAGUNN
GMBH'S RESPONSE TO PLAINTIFFS'
FIFTH REQUESTS FOR PRODUCTION
OF DOCUMENTS**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendant floragunn GmbH hereby responds to Plaintiffs Elasticsearch, Inc., and elasticsearch B.V.'s Fifth Request for Production of Documents served on December 23, 2020, as follows:

GENERAL OBJECTIONS

floragunn objects to Elastic's Definitions and Instructions to the extent they purport to impose any discovery obligation beyond or inconsistent with that required by the Federal Rules of Civil Procedure and the Local Civil Rules of the United States District Court for the Northern District of California. floragunn further objects to the production of documents resulting in the disclosure of personal information in violation of applicable privacy laws. floragunn further objects to the extent that the requests call for the production of documents protected by the work product doctrine, the attorney-client privilege, or any other applicable privileges.

RESPONSES TO INDIVIDUAL REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 100:

All source code used to create the Search Guard object code identified and/or referenced in DEF033182.

Response: floragunn has already produced the source code used to create the Search Guard object code identified and/or referenced in DEF033182, to the extent that it is within its custody, possession, or control.

REQUEST FOR PRODUCTION NO. 101:

All documents related to the design, development, authorship, or testing of the Search Guard object code identified and/or referenced in DEF033182.

Response: floragunn objects to the request for "all documents" as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, to the extent not already provided, floragunn will produce such documents that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 102:

All documents reflecting the results of unit and integration tests floragunn contends were performed for the June 7, 2018 commit 93b491a182c2f8ff4d0b7ac72cb4bda0c6eb12d2 to Search Guard.

Response: floragunn objects to the request for “all documents” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, to the extent not already provided, floragunn will produce documents reflecting the results of the unit or integration testing of the June 7, 2018 commit that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 103:

To the extent not already produced, all documents supporting any claim that Hendrik Saly is unavailable to be deposed in this lawsuit.

Response: floragunn objects to the request for “all documents” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, floragunn will produce documents supporting the fact that Hendrik Saly is unavailable to be deposed in this lawsuit that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 104:

All communications with Amazon related to any actual or contemplated agreements related to Search Guard, including without limitation documents and communications reflecting any negotiations related to any such actual or contemplated agreements and documents and communications related to the performance of any such agreements.

Response: floragunn objects to the request for “all communications” as overbroad, unduly burdensome, not proportional to the needs of the case. floragunn further objects to the request on the grounds of relevance concerning documents related to negotiations of contemplated agreements with Amazon, or performance under such agreements. Copies of all relevant agreements with Amazon have already been produced. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). floragunn will not produce and additional documents requested.

REQUEST FOR PRODUCTION NO. 105:

All communications with Deutsche Telekom related to demand for any set of security,

1 alerting, monitoring, reporting, and/or related features that extend or enhance any Elastic product
 2 (including but not limited to Elasticsearch or Kibana), service, or SaaS offering.

3 Response: floragunn objects to the request for “all communications” as overbroad, unduly
 4 burdensome, and not proportional to the needs of the case. floragunn further objects to this
 5 request on the grounds of relevance, as no work by floragunn involved any code alleged by
 Elastic to have been infringed in this case. floragunn will not produce the documents requested.

6 **REQUEST FOR PRODUCTION NO. 106:**

7 All documents and communications related to comments on GitHub related to consumer
 8 demand for any set of security, alerting, monitoring, reporting, and/or related features that extend
 9 or enhance any Elastic product (including but not limited to Elasticsearch or Kibana), service, or
 10 SaaS offering.

11
 12 Response: floragunn objects to the request for “all documents and communications” as
 13 overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further
 14 objects to this request to the extent that it calls for information protected by privilege (including
 15 common interest privilege) or the work product doctrine, or information that is protected from
 16 disclosure by Rule 26(b)(4)(D). floragunn further objects to this request as irrelevant to the
 extent it calls for documents and communications related to “any Elastic product . . . , services,
 or SaaS offering” beyond Elasticsearch and Kibana. Subject to and without waiving the
 foregoing objections, floragunn is willing to meet and confer with Elastic to narrow this request.

17 **REQUEST FOR PRODUCTION NO. 107:**

18 To the extent not already produced, all documents and communications related to any
 19 surveys related to consumer demand for any set of security, alerting, monitoring, reporting,
 20 and/or related features that extend or enhance any Elastic product (including but not limited to
 21 Elasticsearch or Kibana), service, or SaaS offering.

22 Response: floragunn objects to the request for “all documents and communications” as
 23 overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further
 24 objects to this request to the extent that it calls for information protected by privilege (including
 25 common interest privilege) or the work product doctrine, or information that is protected from
 26 disclosure by Rule 26(b)(4)(D). floragunn further objects to this request as irrelevant to the
 27 extent it calls for documents and communications related to “any Elastic product . . . , services,
 28 or SaaS offering” beyond Elasticsearch and Kibana. Subject to and without waiving the
 foregoing objections, to the extent not already provided, floragunn will produce survey
 documents related to Elasticsearch and Kibana that it is able to locate after an appropriate and
 proportional search.

REQUEST FOR PRODUCTION NO. 108:

To the extent not already produced, all documents and communications related to any communications between floragunn and any person at conferences related to consumer demand for any set of security, alerting, monitoring, reporting, and/or related features that extend or enhance any Elastic product (including but not limited to Elasticsearch or Kibana), service, or SaaS offering.

Response: floragunn objects to the request for “all documents and communications” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). floragunn further objects to this request as irrelevant to the extent it calls for documents and communications related to “any Elastic product . . . , services, or SaaS offering” beyond Elasticsearch and Kibana. Subject to and without waiving the foregoing objections, floragunn will produce responsive documents that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 109:

To the extent not already produced, all communications with Andreas Riedel related to this lawsuit or any claim or defense in this lawsuit.

Response: floragunn objects to the request for “all communications” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, to the extent not already provided, Elastic will produce responsive documents that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 110:

All agreements between floragunn and Andreas Riedel related to Andreas Riedel’s employment by floragunn or contractor relationship with floragunn, including without limitation any consulting agreements, employment contracts, and termination agreements.

Response: floragunn objects to the request for “all agreements” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure

by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, floragunn will produce Mr. Reidel's employment, termination, and any consulting agreements with floragunn to the extent they have not already been produced.

REQUEST FOR PRODUCTION NO. 111:

To the extent not already produced, all communications with any insurer of floragunn related to this lawsuit and all documents related to any insurance coverage of floragunn or insurance claim by floragunn related to this lawsuit.

Response: floragunn objects to the request for "all communications" and "all documents" as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, to the extent not already provided, floragunn will produce relevant insurance policy agreements, and communications with insurers concerning insurance claims related to this lawsuit after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 112:

All communications between you and Excelerate related to actual or contemplated agreements with Amazon or Excelerate related to Search Guard, including documents and communications related to negotiating any actual or contemplated agreements and performance of any agreements.

Response: floragunn objects to the request for "all communications" as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, floragunn will produce responsive documents after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 113:

To the extent not already produced, all communications between you and Excelerate related to Search Guard code that Elastic has identified as infringing (whether in its First Amended Complaint in *floragunn I*, its Complaint in *floragunn II*, or through discovery), including, but not limited to, documents and communications related to support or maintenance services provided by Excelerate.

Response: floragunn objects to the request for “all communications” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, floragunn will provide responsive documents after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 114:

To the extent not already produced, all press releases, announcements, release notes, and blog posts related to any Search Guard features or versions that are enabled by code that Elastic has identified as infringing (whether in its First Amended Complaint in *floragunn I*, its Complaint in *floragunn II*, or through discovery).

Response: floragunn objects to the request for “all press releases, announcements, release notes, and blog posts” as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving the foregoing objections, floragunn is willing to meet and confer with Elastic to narrow this request.

REQUEST FOR PRODUCTION NO. 115:

All documents related to any price testing for Search Guard or efforts to determine pricing levels for Search Guard.

Response: floragunn objects to the request for “all documents” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, floragunn is willing to meet and confer with Elastic to narrow this request.

REQUEST FOR PRODUCTION NO. 116:

All documents related to any actual or contemplated discounts to customers related to Search Guard.

Response: floragunn objects to the request for “all documents” as overbroad, unduly burdensome, and not proportional to the needs of the case. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). floragunn further objects to the extent that this request calls for documents related to discounts to customers located outside the United States. All discounts are reflected in customer invoices already produced by floragunn in this case. floragunn will not produce additional documents.

REQUEST FOR PRODUCTION NO. 117:

All documents and communications related to any audit or evaluation of Search Guard code performed by Amazon or at Amazon's direction, including without limitation audits and evaluations performed by Black Duck Software, Inc., Synopsys, Inc., and any audit or evaluation referenced in the following blog post: <https://aws.amazon.com/blogs/opensource/launching-open-distro-for-elasticsearch-security-features-on-amazon-elasticsearch-service/>.

Response: floragunn objects to the request for "all documents" as overbroad, unduly burdensome, and not proportional to the needs of the case. Subject to and without waiving the foregoing objections, floragunn will produce responsive documents that it is able to locate after an appropriate and proportional search.

REQUEST FOR PRODUCTION NO. 118:

All documents related to floragunn's, Excelerate's, or Amazon's reactions to Elastic making certain source code for X-Pack publicly available in April 2018, including any communications between any of floragunn, Excelerate, or Amazon related to Elastic making certain source code for X-Pack publicly available in April 2018.

Response: floragunn further object to the requests as unclear and vague, and potentially calling for production of documents not relevant to any party's claims or defenses. floragunn further objects to this request to the extent that it calls for information protected by privilege (including common interest privilege) or the work product doctrine, or information that is protected from disclosure by Rule 26(b)(4)(D). Subject to and without waiving the foregoing objections, to the extent not already produced, floragunn will produce responsive documents that it is able to locate after an appropriate and proportional search.

Dated: January 22, 2020

WUERSCH & GERING LLP

By: 

Attorneys for Defendant floragunn GmbH

CERTIFICATE OF SERVICE

I am an attorney at Wuersch & Gering LLP, counsel for Defendant, in the above-captioned proceeding. I hereby certify that on January 22, 2020, I caused the foregoing **Response to Plaintiffs' Fifth Requests for Production** to be served electronically via email to ElasticsearchFloragunn@omm.com upon counsel for Plaintiffs Elasticsearch, Inc., and elasticsearch B.V.



John A. Smitten